

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0125 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1998

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ISSUE

1. Controlled Substance Excise Tax: Imposition

Authority: IC 6-7-3-5. IC 6-8.1-5-1 (b), Hurst v. Department of Revenue, 720 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999).

The taxpayer protests the imposition of the Controlled Substance Excise Tax.

Statement of Facts

On October 2, 1998, the taxpayer was arrested for the possession of marijuana. The County Prosecutor of the appropriate county on December 27, 2000 sent the Indiana Department of Revenue written notification that there would be no prosecution for the charge of the possession of the marijuana. On April 6, 2001, the Indiana Department of Revenue issued a Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand in a base tax amount of \$340.62. A telephone hearing was held on August 8, 2001. Further facts will be provided as necessary.

1. Controlled Substance Excise Tax: Imposition

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Indiana Department of Revenue assessments are presumed to be correct and the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

Possession of the controlled substance can be either actual or constructive. Hurst v. Department of Revenue, 720 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999). Although both direct and circumstantial evidence may prove constructive possession, proof of presence in the vicinity of drugs, presence on property where drugs are located, or mere association with the possessor is not sufficient. Hurst at 374-375. To prove constructive possession, there must be a showing that Taxpayer had not only the requisite intent but also the capability to maintain dominion and control over the substance. Hurst at 374.

The issue to be determined in this case is whether or not the taxpayer had constructive possession of the marijuana. State Police officers observed marijuana growing on the taxpayer's real estate during a helicopter flyover. Officers later located marijuana growing in several areas of the real estate. Paths led between the various groupings of marijuana plants and ended near the taxpayer's residence. The plants appeared to be cultivated since they were held over by vines and manure was at the base of the plants. This evidence supports the finding that the taxpayer intended to grow the marijuana and had the capability to maintain dominion and control over the marijuana. Therefore, the taxpayer had constructive possession of the marijuana.

Finding

The taxpayer's protest is denied.